

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 798 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 Yes 2 to 5 No

MR SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Petitioner

MR DA BAMBHANIA for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 07/07/98

ORAL JUDGEMENT

Rule.

Departmental enquiry was instituted against the petitioner while working as office Superintendent in the office of the Commissioner of Industries, Gujarat State, vide chargesheet dated 18.5.1996. He retired on attaining the age of superannuation on 31.3.1997. By the

impugned order dated 23.1.1998 Annexure-A under the provisions of the Rule 189-A of the Bombay Civil Services Rules a penalty of reduction in pension of Rs. 25/- per month for one year has been inflicted.

2. Various contentions have been raised assailing the order imposing the penalty. There is also a grievance with respect to withholding retirement benefits which is subject matter of another Special Civil Application No. 4609 of 1997. One of the contentions is that the penalty of reduction in pension of Rs. 25/- per month for one year is ex facie illegal as the penalty has been imposed without consulting the Gujarat Public Service Commission. The relevant portion of the Rule 189-A of the B.C.S.R. is extracted as follows:-

"189-A The Governor reserves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering, the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including services rendered upon re-employment after retirement;

Provided that:

- (a) such departmental proceedings, if instituted, while the Government servant was in service whether before his retirement or during his re-employment shall after the final retirement of the Government servant, be deemed to be a proceeding under this rule and shall continue and concluded by the authority which it was commenced in the same manner, as if the Government servant had continued in service,
- (b) such departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment:
 - (i) shall not be instituted save with the sanction of the Governor,
 - (ii) shall not be in respect of any event, which took place more than 4 years before such institution, and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to the departmental proceedings, in which an order of dismissal for service could be made in relation to the Government servant during his service,

(c) deleted

(d) The Gujarat Public Service Commission shall be consulted before final orders are passed.

3. Reading of Rule 189-A clearly shows that a right is vested with the Governor of withholding or withdrawing of the pension or any part of it for a specified period subject to certain conditions and one of the conditions is that it can be done only after consultation of the Gujarat Public Service Commission. It is not in dispute that Gujarat Public Service Commission has not been consulted in the instant case. However, the contention of Mr. Bambhania, Government Solicitor that it is not necessary to consult the Commission in any of the matter specified in paragraph 3 of the Article 320 as provided under the Regulations known as the Gujarat Public Service Commission (Exemption from Consultation) Regulations, 1960. The learned counsel has invited my attention to para 22 which provides all other services and posts to which appointments are made by authorities subordinate to Government. In my view the said regulations have no relevance in the present context as the said rules are attracted in a case where there is a requirement of consultation in the matter specified in paragraph (a) and (b) of Article 320 of the Constitution but in case of pensioners a specific provisions has been made under B.C.S.R. for consultation of the Gujarat Public Service Commission. Thus, in my view, the order of inflicting penalty is vitiated as before imposing the penalty, the Gujarat Public Service Commission has not been consulted. Power under Rule 189-A of the B.C.S.R. can be invoked by the Governor only after consultation of the Gujarat Public Service Commission.

4. In view of the aforesaid, this Special Civil Application is allowed and the impugned order dated 23.1.1998 inflicting penalty of reduction in pension of Rs. 25/- per month for a period of one year is quashed and set aside. It is directed that the respondents will pay all the pensionary benefits of the petitioner within a period of three months from today. Rule made absolute to the aforesaid extent. No order as to costs.

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